

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: TESTOSTERONE)
REPLACEMENT THERAPY)
PRODUCTS LIABILITY LITIGATION)

MDL No. 2545

Case No. 14 C 1748

This document relates to:

***Medical Mut. of Ohio v. AbbVie,
Inc., No. 1:14-cv-8857***

Case No. 14 C 8857

CASE MANAGEMENT ORDER NO. 106

(Order on plaintiff's motion to compel regarding promotional expenditures and memberships/sponsorships in *Med. Mut. of Ohio v. AbbVie*)

Plaintiff Medical Mutual of Ohio (MMO) has moved to compel defendants to provide further responses to two interrogatories regarding promotional expenditures and sponsorships. The Court overrules defendants' timeliness objection and need not address at this point the implications of compelling this discovery with respect to the briefing of MMO's motion for class certification. The Court makes the following rulings regarding the two interrogatories.

Interrogatory 2

- AbbVie: The Court directs AbbVie to serve, by no later than March 26, 2018, an amended response to Interrogatory 2. The amended response must identify by Bates number the new documents responsive to this particular interrogatory that AbbVie says it located and produced after MMO filed its motion to compel. AbbVie must also narrow the Bates numbers in the amended response so that they reflect only responsive information—a task AbbVie says it is willing to undertake. In addition, it is unclear to the Court whether AbbVie limited its

response to Interrogatory 2 by providing information only about expenditures for promotion to third-party payors. If AbbVie did not limit its response in this manner, its amended response must say so. If AbbVie limited its response in this manner, its amended response must include information about expenditures for promotion of TRT drugs to healthcare providers and consumers.

- Actavis: The Court directs Actavis to serve, by March 26, 2018, an amended response to Interrogatory 2. The amended response must identify by Bates number the documents Actavis identifies in its opposition memorandum as responsive to this interrogatory as well as any other documents or information responsive to Interrogatory 2 that Actavis has produced. The Court also orders Actavis to immediately ascertain whether it, like AbbVie, can obtain further supporting detail for the responsive information it has already produced by searching records such as structured databases, and to include such information (or a particularized explanation of why it cannot be obtained) in its amended response. In addition, it is unclear to the Court whether Actavis limited its response to Interrogatory 2 by providing information only about expenditures for promotion to third-party payors. If Actavis did not limit its response in this manner, its amended response must say so. If Actavis limited its response in this manner, its amended response must include information about expenditures for promotion of TRT drugs to healthcare providers and consumers.
- Eli Lilly: The Court directs Eli Lilly to serve, by March 26, 2018, an amended response to Interrogatory 2. The amended response must identify by Bates number the document Eli Lilly identifies in its opposition memorandum as

responsive to the interrogatory as well as any other documents or information responsive to Interrogatory 2 that Eli Lilly has produced. The Court also orders Eli Lilly to immediately ascertain whether it, like AbbVie, can obtain further supporting detail for the responsive information it has already produced by searching records such as structured databases, and to include such information (or a particularized explanation of why it cannot be obtained) in its amended response.

- Endo: The Court directs Endo to immediately ascertain whether it, like AbbVie, can obtain further supporting detail for the responsive information it has already produced by searching records such as structured databases, and to include such information (or a particularized explanation of why it cannot be obtained) in an amended response to Interrogatory 2, which must be served by March 26, 2018.
- Auxilium: The Court directs Auxilium to immediately ascertain whether it, like AbbVie, can obtain further supporting detail for the responsive information it has already produced by searching records such as structured databases, and to include such information (or a particularized explanation of why it cannot be obtained) in an amended response to Interrogatory 2, which must be served by March 26, 2018. In addition, if Auxilium is in possession, custody, or control of hard-copy documents and/or electronic custodial documents from before its merger with Endo—and if the hard-copy documents are labeled or indexed in a way that suggest they might contain information responsive to this

interrogatory—Auxilium must search them and include this information in its amended response that is to be served by March 26, 2018.

Interrogatory 4

MMO agreed that Endo and Auxilium could use eight specific entities identified in MMO's third amended complaint as a starting point to search for information responsive to Interrogatory 4, reserving its right to seek relief beyond those entities. In view of this understanding that MMO reached with Endo and Auxilium, the Court orders that the same understanding will apply to Interrogatory 4 with regard to AbbVie, Actavis, and Eli Lilly and further orders as follows.

- AbbVie: AbbVie states that it has already started searching its structured databases for responsive information regarding the eight entities. AbbVie must complete these searches and serve an amended response to Interrogatory 4 by March 26, 2018.
- Actavis: Unlike AbbVie, Actavis does not state that it has already started searching for responsive information regarding the eight entities. Actavis must conduct these searches and serve an amended response to Interrogatory 4 by March 26, 2018. Actavis's amended response also must identify, by Bates number, the documents Actavis identifies in its opposition memorandum as responsive to this interrogatory, as well as any other responsive documents or information it has produced.
- Eli Lilly: Like AbbVie, Eli Lilly states that it has already started searching its records for responsive information regarding the eight entities. Eli Lilly must complete these searches and serve an amended response to Interrogatory 4 by

March 26, 2018. In addition, Eli Lilly's amended response must identify the information Eli Lilly references in its opposition memorandum as responsive to this interrogatory, as well as any other responsive documents or information it has produced.

It is so ordered.

Date: March 14, 2018


MATTHEW F. KENNELLY
United States District Judge